

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

WELLINGTON GARCIA,
Plaintiff,

Case No. 9:21-CV-0135
(DHN/TWD)

-VS-

AMENDED PETITION
Jury Trial ☒ Yes [] No

LAGARDE, Sergeant; Bare Hill Correctional
JOHN DOE, #1, Corrections Officer;
Bare Hill Correctional
JOHN DOE, #2, Corrections Officer;
Bare Hill Correctional
JOHN DOE, #3, Corrections Officer;
Bare Hill Correctional
JOHN DOE, #4, Corrections Officer;
Bare Hill Correctional
JOHN DOE, #5, Corrections Officer;
Bare Hill Correctional
JOHN DOE, #6, Corrections Officer;
Bare Hill Correctional

COMPLAINT FOR CIVIL CASE

1. Jurisdiction is Conferred upon this Court because
its involves a Federal Question of Law.

PARTIES

2. Plaintiff: WELLINGTON GARCIA
Address: BARE HILL CORRECTIONAL FACILITY

CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: LAGARDE
Official Position: Correctional Sergeant
Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: JOHN DOE 1
Official Position: Corrections Officer
Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: JOHN DOE #2
Official Position: Corrections Officer
Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: JOHN DOE #3
Official Position: Corrections Officer
Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: JOHN DOE #4
Official Position: Corrections Officer
Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: JOHN DOE #5

Official Position: Corrections Officer

Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Defendant: JOHN DOE

Official Position: Corrections Officer

Address: BARE HILL CORRECTIONAL FACILITY
CALLER BOX 20, 181 BRAND ROAD
MALONE, NEW YORK 12953

Basis for Jurisdiction

1. That this case involves a federal question pursuant to the United States Constitutional violations that are being alleged.
2. The Federal questions involved are: (1) the excessive use of force against plaintiff coupled with the death threats in violation of Plaintiff's Eighth Amendment right; (2) the violation of Plaintiff's Fourth Amendment Right pursuant to the unlawful search; and (3) the violation of Plaintiff's Eighth Amendment Right pursuant to conditions-of-confinement.

STATEMENT OF FACTS PURSUANT TO CLAIM

On or about October 21, 2020, I was taken to the Special Housing Unit (Hereinafter, SHU) at the Bare Hill Correctional Facility. Upon entering SHU I was knocked down and beaten by corrections officers John Doe # 1, John Doe # 2, and John Doe # 3. I was beaten and kicked in my rib cage and leg area numerous times by all of the officers. Then officer John Doe #1, threaten me by telling me "that you are lucky we do not kill your ass, you spick bastard". Upon entering SHU I was still in handcuffs when I was beaten. I did nothing to provoke the officers nor did I physically resist . Even during and while I was being beaten, I just covered up as best I could.

After the beaten, officer John Doe #2, removed the handcuffs and officer John Doe #1, ordered me to take off my socks. As soon as I did he stepped on my foot and toes and twist his boots on my feet. Officers John Doe # 2 and # 3 just stood idly by without saying anything.

On or about October 22, 2020, at around 4:30 to 5:00 P.M., This Plaintiff was taken out of SHU Cell # 31 by officer **John Doe # 4 (a tall caucasian officer)** and **John Doe # 5**. At that time Plaintiff was searched for a weapon prior to going to a disciplinary hearing. **Officer John Doe #4** then put his hands inside this Plaintiff's pants, and put his fingers in between this Plaintiff's buttocks, and grabbed and squeezed Plaintiff's penis. He then threaten this Plaintiff that if he said anything about what happened to anyone, that he will wish that he did not.

On or about October 22, 2020, this Plaintiff was taken out of SHU Cell # 31, and taken to SHU Cell # 27. SHU Cell # 27 has a broken window that does not close. It was winter time and the temperature drops substantially at night. Thus, the cell was very cold. When Plaintiff asked could he have a blanket. Plaintiff was told by officers **John Doe # 5** and **John Doe # 6** to deal with it and suffer, and to stop asking for things that he knew that he was not going to get, or he will not be leaving this building alive.

On or about October 27, 2020, this Plaintiff was taken out of his SHU Cell and escorted to a disciplinary hearing. At this hearing this Plaintiff informed the hearing officer of the abuse, sexual assault, and beatings by the SHU officers on the hearing tape, but was ignored by hearing officer Lt. Dumas.

On or about October 28, 2020, this Plaintiff was taken to the facility infirmary. Before being escorted to the infirmary, this Plaintiff was threaten by sergeant Lagarde, to not say anything about being beaten, denied food or sexually assaulted⁴ by officers in SHU to the medical staff. And if he Plaintiff did that Plaintiff would be peppered-sprayed and receive an ass beaten upon his return to SHU. Sergeant Lagarde than intimidated this Plaintiff, by staying in the examination room with the medical staff, during the entire examination of this Plaintiff, although this Plaintiff was handcuffed.

On or about October 28, 2020, after the examination by the facility medical staff. It was determined that this Plaintiff was suffering from Dehydration, and severe lost of weight of approximately 10 pounds in one week. At this time, this Plaintiff was escorted to the out-side hospital (Alycy Hyde Medical Center) for an examination and observation. This Plaintiff then informed the nurse and doctor, that he was being starved and abused in Bare Hill Correctional Facility. This Plaintiff was not given any food from the time period of October 21, 2020, to October 28, 2020, by any of the SHU Officers or Staff member at Bare Hill Correctional Facility.

CAUSE OF ACTION

First Cause of Action, Plaintiff's Constitutional Rights were violated pursuant to the use of excessive force under the Eight Amendment.

Second Cause of Action, Plaintiff's Constitutional Rights were violated pursuant to the unlawful search under the Fourth Amendment.

Third Cause of Action, Plaintiff's Constitutional Rights were violated pursuant to his conditions-of-confinement under the Eight Amendment.

Plaintiff seeks the following Relief:

This Plaintiff seeks One Million dollars (1,000.000.00) in punitive damages for the conduct of all of the defendants. In their official and unofficial capacities. See, Attacment 1-4 .

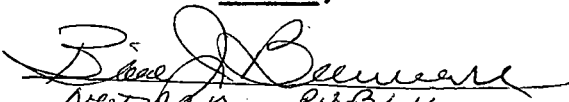
I declare under penalty of perjury that the foregoing is true and correct.


WELLINGTON GARCIA

DM#19B0349

SWORN TO BEFORE ME

THIS 26 , DAY OF APRIL OF 2021


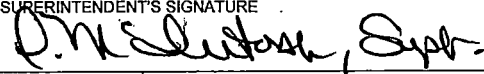

NOTARY PUBLIC

-8-

BRIAN J BENWARE
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01BE6334240

QUALIFIED IN FRANKLIN COUNTY
COMMISSION EXPIRES DECEMBER 14, 2023 BB

ATTACHMENT 1- 4

 INMATE GRIEVANCE PROGRAM D. McIntosh Superintendent	GRIEVANCE NO. BRL- # 0185-20	DATE FILED 11/19/20
	FACILITY Bare Hill Correctional Facility	POLICY DESIGNATION I
	TITLE OF GRIEVANCE Not Fed in SHU/Medical	CLASS CODE 49
	SUPERINTENDENT'S SIGNATURE 	DATE 12/14/20
GRIEVANT Garcia, Wellington	DIN # 19R0349	HOUSING UNIT G2/41B

As noted by the grievant, he was admitted to SHU on 10/21/20. The above referenced grievance has been investigated. The grievant's complaint states, while he was in SHU, Officers walked by his cell and did not feed him. They allegedly told him he would starve to death.

The grievant was interviewed on 11/23/20 by the Security Supervisor assigned to investigate his grievance. During the interview, the grievant's written complaint was reviewed. The grievant added no new information and did not identify any witnesses to substantiate his claims.

The SHU logbook was reviewed for any entry regarding the grievant refusing any meal. No refusals were indicated. The accused Officer was interviewed regarding the allegations. He has denied all allegations.

The grievant alleges that Medical treatment received was unnecessary.

The grievant was seen by the doctor on 10/28/20 for left ankle pain. It was noted at that time that his blood pressure and pulse were elevated. He reported to the doctor that he had been experiencing palpitations for one week. The grievant also complained of bleeding gums which he noted after brushing his teeth. The grievant was sent to the Emergency Room at AHMC for evaluation. Upon arrival at AHMC, he additionally complained of abdominal pain. He was treated and released to Franklin C.F. infirmary on 10/28/20 for observation. It is protocol for an inmate to be sent to the infirmary after an ER trip or admission to the Hospital. Bare Hill C.F. does not have an infirmary, therefore, Franklin C.F.'s infirmary is utilized by Bare Hill C.F. in these instances. The grievant was discharged back to Bare Hill C.F. on 10/30/20.

Upon review of his emergency room notes and his infirmary record from Franklin C.F., there is nothing indicating that the grievant was not being fed. There is no evidence to suggest that medical treatment was unnecessary or that there was any malfeasance by staff. This grievance is denied.

APPEAL STATEMENT

If you wish to refer the above decision of the Superintendent please sign below and return this copy to your Inmate Grievance Clerk. You have seven (7) calendar days from receipt of this notice to file your appeal.* Please state why you are appealing this decision to C.O.R.C.

GRIEVANT'S SIGNATURE

DATE

GRIEVANCE CLERK'S SIGNATURE

DATE

*An exception to the time limit may be requested under Directive #4040, section 701.6(g).



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

MEMORANDUM

TO: Garcia, Wellington DIN 19R0349 Housing Location: G2-41B
 FROM: C. Lamore, Inmate Grievance Program Supervisor *a*
 DATE: 11/19/20
 SUBJ: Grievance Complaint Alleging Sexual Abuse or Sexual Harassment

In accordance with Directive #4040 § 701.3 (i), any inmate grievance complaint filed alleging sexual abuse or sexual harassment (PREA complaint) shall immediately be reported by the IGP Supervisor to the Watch Commander for further handling in accordance with Department policies. The grievance shall be deemed exhausted upon filing for Prison Litigation Reform Act (PLRA) purposes. If the grievance does not set forth any additional timely matters that require a response, the grievance shall be closed.

Your grievance # BRL 0184-20, dated 11/17/20, has been forwarded to the Watch Commander in accordance with Directive #4040 § 701.3 (i) and the Department's Sexual Abuse and Sexual Harassment Reporting and Investigation Policies.

- ☐ Your grievance contains only allegations of sexual abuse or sexual harassment. Accordingly, your grievance is deemed exhausted and has been closed. You will not receive a response to this complaint through the Inmate Grievance Program mechanism.
- ☒ Your grievance contains allegations of sexual abuse or sexual harassment as well as additional timely matters unrelated to sexual abuse or sexual harassment. Your complaint will be treated as two separate grievances. The sexual abuse/sexual harassment allegations have been reported to the facility Watch Commander in accordance with Department policy. The complaints about timely matters unrelated to the sexual abuse or sexual harassment allegations will be treated as a separate grievance logged as # BRL 0185-20 and will be processed in accordance with Directive #4040. You will not receive a response to your sexual abuse/sexual harassment complaint through the Inmate Grievance Program mechanism.

cc: SA/SH Grievance # BRL 0184-20 file

INMATE GRIEVANCE COMPLAINT

Grievance No.

BRL0184-20

BARRE HILL

CORRECTIONAL FACILITY

Date: 11/17/20

Name: WELLINGTON GARCIA

Dept. No.: 19R0349

Housing Unit: G2-41B

Program: _____ AM _____ PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) FROM 10/21/20 to 10/28/20 while at the SHU-unit I was not fed any food. Officers walked by me with the food cart and not open my meal slot. They told me I was going to starve to death. On 10/22 a tall skinny officer wearing a mask inserted his hand inside my underwear and touch my rear private area (butt) without my consent, while doing a frisk/body search. On 10/24 I complained about a sharp stomach pain & dizziness, on 10/28 I was taken to the hospital with high blood pressure and spent 48 hours in observation in Franklyn C. I feel this treatment were unnecessary and are not part of my sentence. I wish for this incidents to be documented so it won't never happen to me in the future.

Grievant Signature:

Grievance Clerk:

C. Fulmer

Date: 11/19/20

Advisor Requested ☐ YES ☐ NO

Who: _____

Action requested by inmate: _____

The Grievance has been formally resolved as follows: _____

This Informal Resolution is accepted:
(To be completed only if resolved prior to hearing)

Grievant

Signature: _____

Date: _____

If unresolved, you are entitled to a hearing by the Inmate Grievance Resolution Committee (IGRC).

* An exception to the time limit may be requested under Directive #4040, section 701.6(a).

FORM 2131E (9/12)

STATE OF NEW YORK - DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION

INMATE GRIEVANCE COMPLAINT

Grievance No.

BRL 0185-20

BAPE HILL

CORRECTIONAL FACILITY

Date: 11/17/20

Name: WELLINGTON GARCIA

Dept. No.: 19R0349

Housing Unit: G2-41B

Program: _____ AM _____ PM

(Please Print or Type - This form must be filed within 21 calendar days of Grievance Incident)*

Description of Problem: (Please make as brief as possible) FROM 10/21/20 to 10/28/20 while AT the SHU-unit I W
 NOT FEE ANY FOOD. OFFICERS WALKED BY ME WITH THE FOOD CART AND NOT OPEN MY MEAL SLOT. THEY TOLD
 ME I WAS GOING TO STARVE TO DEATH. [REDACTED]

[REDACTED] ON 10/24 I COMPLAINED ABOUT A SHARP STOMACH PAIN & DIZZINESS, ON 10/28 I
 TAKEN TO THE HOSPITAL WITH HIGH BLOOD PRESSURE AND SPENT 48 HOURS IN OBSERVATION IN FRANKLIN C.
 I FEEL THIS TREATMENT WERE UNNECESSARY AND ARE NOT PART OF MY SENTENCE. I WISH FOR THIS
 INCIDENTS TO BE DOCUMENTED SO IT WON'T NEVER HAPPEN TO ME IN THE FUTURE.

Grievant

Signature: [REDACTED]

Grievance Clerk: C. Fulmer

Date: 11/19/20

Advisor Requested ☐ YES ☐ NO

Who: _____

Action requested by inmate: _____

The Grievance has been formally resolved as follows:

This Informal Resolution is accepted:
 (To be completed only if resolved prior to hearing)

Grievant

Signature: _____

Date: _____